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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/652,892
Filing Date: August 29, 2003
Appellant(s): OWHADI ET AL.

MAILED

MAR 05 2008

Technology Center 2100

Robert Popa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/21/2007 appealing from the Office action mailed 07/25/2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6145096	Bereiter et al.	11-2000
"Signed Applets, Browsers, and File Access"	Pawlan et al.	04-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. Claims 15-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 15 recites "a computer readable medium". However, there is no description in the specification to support the above-mentioned limitation. The closest disclosure in the specification is found in Paragraph [0008] (of the instant publication or page 2 lines 18-21 of the instant specification) where "the application may be stored on a device" is disclosed and in Figure 1 where a PC 10 is demonstrated. This disclosure is not similar in scope to the term "computer readable medium".

Claims 16, 17 are rejected as incorporating the deficiencies of claim 15 upon which it depends.

Claim Rejections - 35 USC § 101

2. Claims 15-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

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As to claim 15, a "software element on a computer readable medium" is being recited; however, it appears that the element would reasonably be interpreted by one of ordinary skill in the art as software, per se. A software element being stored on a computer readable medium is still considered software, per se. As such, it is believed that the element of claim 15 is reasonably interpreted as functional descriptive material, per se. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, a machine, manufacture, or a composition of matter.

Claims 16, 17 fail to resolve the deficiencies of claim 15 and therefore are also rejected.

Claim Rejections - 35 USC § 102

3. **Claims 1-2, 8-9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bereiter et al (Patent No. 6145096; hereinafter Bereiter).**

As to claim 1, Bereiter teaches:

A method of obtaining technical support for a data-processing device (e.g., a method for automated technical support in a computer network having a client machine and at least one server, see Abstract), comprising initiating a support session (e.g., step 62 or step 74 in Fig. 5) during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query (e.g., steps 76-82 in Fig. 5), and polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated (e.g., steps 84 and 86 in Fig. 5).

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As to claim 2, Bereiter further teaches wherein the polling is effected by a polling application obtained from the support provider (e.g., see col. 4 lines 45-49 and col. 8 lines 52-55).

As to claim 8, Bereiter further teaches wherein the support session is established (e.g., step 62 or step 74 in Fig. 5) using a web connection (e.g., see Fig. 1) and wherein the polling application (e.g., the program to execute the steps 84 and 86 in Fig. 5) is downloaded from the support provider using an applet (e.g., col. 4 lines 45-49 and col. 8 lines 52-55).

As to claim 9, Bereiter further teaches wherein the applet is operative to download a data harvester to gather the device-specific data (e.g., see col. 2 lines 38-45 and col. 4 lines 45-49).

As to claim 12, Bereiter further teaches wherein the polling (e.g., steps 84 and 86 in Fig. 5) is effected using HTTP (e.g., see col. 4 lines 45-49 and col. 8 lines 52-55).

Claim Rejections - 35 USC § 103

4. Claims 10-11, 13-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bereiter in view of Pawlan et al (Pub article 'Signed Applets, Browsers, and File Access' April-1998, pp 1-5; hereinafter Pawlan).

As to claim 13, Bereiter teaches:

A method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session (e.g., a method for automated technical support in a computer network having a client machine and at least one server, see Abstract), the method comprising receiving device-specific data to assist the support

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provider in responding to a support query (e.g., steps 76-82 in Fig. 5), dispatching a polling application operative to poll the support provider for a response to the query (e.g., the program to execute the steps 84 and 86 in Fig. 5) and notifying the user that a response has become available (e.g., step 72 in Fig. 5), the polling application being dispatched, from or on behalf of the support provider, in response to an instruction generated using an applet (e.g., col. 4 lines 45-49 and col. 8 lines 52-55).

While Bereiter teaches security must be considered for data gathering (e.g., see col. 8 lines 23-34), Bereiter does not expressly disclose a trusted applet.

In the same field of endeavor of running Java applet to access data from a client machine, Pawlan teaches that for an applet to access local system resources outside the directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access').

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the method of a signed applet as taught by Pawlan to the method of automated technical support in a computer network as taught by Bereiter to create a web-based active technical support that allows a trusted applet to gather and access data from a client machine. The motivation to combine Pawlan's teaching with Bereiter's teaching is to allow system data to be gathered and sent to the technical supporter automatically and still protect local files or system against un-trusted sources.

As to claim 14, Bereiter teaches:

A server-side technical support source comprising a web server to participate in asynchronous messaging with a client-side device (e.g., see Fig. 1), the support source being operative to supply, to the device (e.g., see col. 4 lines 45-49 and col. 8 lines 52-55), a polling

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application whereby repeated polling of the support source for a response to a support query may be effected (e.g., the program to execute the steps 84 and 86 in Fig. 5), the polling application being supplied to the device using an applet (e.g., col. 4 lines 45-49 and col. 8 lines 52-55).

While Bereiter teaches security must be considered for data gathering (e.g., see col. 8 lines 23-34), Bereiter does not expressly disclose a trusted applet.

In the same field of endeavor of running Java applet to access data from a client machine, Pawlan teaches that for an applet to access local system resources outside the directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access'): Thus, combining Bereiter and Pawlan would meet the claimed limitations for the same reasons as discussed with claim 13 above.

As to claim 15, Bereiter teaches:

A software element on a computer readable medium for use in the provision of technical support to a user of a data-processing device which (e.g., see Fig. 1), is operative to effect or permit a download of a polling element (e.g., the program to execute the steps 84 and 86 in Fig. 5) whereby a support provider may be polled (e.g., col. 4 lines 45-49 and col. 8 lines 52-55), on a repeated and automated basis, for a response to a support query (e.g., steps 84 and 86 in Fig. 5).

While Bereiter teaches security must be considered for data gathering (e.g., see col. 8 lines 23-34), Bereiter does not expressly disclose a trusted applet and that trust indication is given by a user.

In the same field of endeavor of running Java applet to access data from a client machine, Pawlan teaches that for an applet to access local system resources outside the

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directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access'). Thus, combining Bereiter and Pawlan would meet the claimed limitations for the same reasons as discussed with claim 13 above.

As to claim 18, Bereiter teaches:

A method of obtaining technical support for a data-processing device (e.g., a method for automated technical support in a computer network having a client machine and at least one server, see Abstract), comprising: establishing a support session (e.g., step 62 or step 74 in Fig. 5) using a web connection during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query (e.g., steps 76-82 in Fig. 5 and Fig. 1); downloading a polling application (e.g., the program to execute the steps 84 and 86 in Fig. 5) from the support provider using an applet (e.g., col. 4 lines 45-49 and col. 8 lines 52-55) and polling, using the polling application, the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated (e.g., steps 84 and 86 in Fig. 5).

While Bereiter teaches security must be considered for data gathering (e.g., see col. 8 lines 23-34), Bereiter does not expressly disclose a trusted applet.

In the same field of endeavor of running Java applet to access data from a client machine, Pawlan teaches that for an applet to access local system resources outside the directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access'). Thus, combining Bereiter and Pawlan would meet the claimed limitations for the same reasons as discussed with claim 13 above.

As to claim 10, Bereiter teaches the limitation of claim 8 for the same reason as discussed with respect to claim 8 above. Bereiter does not expressly disclose a trusted applet and that trust indication is given by a user. Pawlan teaches for an applet to access local system resources outside the directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access'). Thus, combining Bereiter and Pawlan would meet the claimed limitations for the same reasons as discussed with claim 13 above.

As to claim 11, Bereiter and Pawlan teach the limitation of claim 11 for the same reason as discussed with respect to claim 11 above. Pawlan teaches the support provider conveys to the user a trust request, agreement to the request allowing execution of the applet (e.g., see Pawlan Para 5 title 'Local File Access'). Thus, combining Bereiter and Pawlan would meet the claimed limitations for the same reasons as discussed with claim 10 above.

As to claim 16, Bereiter and Pawlan teach the limitation of claim 15 for the same reason as discussed with respect to claim 15 above. Bereiter further teaches the polling element (e.g., the program to execute the steps 84 and 86 in Fig. 5) being transmissible from the support provider using HTTP (e.g., see col. 4 lines 13-23 and col. 8 lines 52-55).

As to claim 17, Bereiter and Pawlan teach the limitation of claim 16 for the same reason as discussed with respect to claim 16 above. Bereiter and Pawlan do not teach that the polling element has a footprint of no more than about 50 KB. However, It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created a polling program as taught by Bereiter (e.g., the program to execute the steps 84 and 86 in Fig. 5) that has a data footprint of no more than about 50 KB because the polling program is a

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simple software component that performs the functions of querying a support provider for a response. The motivation is to allow quick download or transmit through internet connection.

As to claim 20, claim 20 is in the same context as claim 9; therefore it is rejected under similar rationale.

5. Claims 3-7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bereiter in view of Pawlan further in view Indigo Rose Software Forums (published post 'AutoPlay After Restart', posted on Indigo Rose Software Forums on 3/22/2001, page 1; hereinafter Indigo).

As to claims 3, 4 and 19, Bereiter and Pawlan teach the limitation of claims 2 and 18 for the same reason as discussed with respect to claims 2 and 18 above. Bereiter teaches that Java application or applet can be downloaded and installed in a supporting device (e.g., see col. 4 lines 45-49); Bereiter does not expressly disclose that during the support session, the polling application is executed subsequent to each boot or start-up sequence of the device. Pawlan teaches a trusted applet that when granted access to specific resources can modify a local source file in a safely manner (e.g., see Pawlan Para 5 title 'Local File Access'). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have created a trusted applet that when granted access can modify a local device registry key to cause the polling program as taught by Bereiter and Pawlan (see Bereiter e.g., the program to execute the steps 84 and 86 in Fig. 5) to be executed subsequent to each boot of a device by simply putting the path to the polling menu in the RUN ONCE registry key as taught by Indigo (see Indigo e.g., posted reply by Mark). The motivation is to cause the polling program to keep

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querying the technical supporter for a response until done. The reasons to combine Bereiter and Pawlan are the same as discussed with respect to claim 13 above.

As to claim 5, Bereiter, Pawlan and Indigo teach the limitation of claim 3 for the same reason as discussed with respect to claim 3 above. Indigo further teaches in a Windows O.S. environment, a Run key located in or operatively associated with the registry of the device is used to execute the application, subsequent to each said boot or start-up sequence (see Indigo e.g., posted reply by Mark). Thus, combining Bereiter, Pawlan and Indigo would meet the claimed limitations for the same reason as discussed with respect to claim 3 above.

As to claims 6 and 7, Bereiter, Pawlan and Indigo teach the limitation of claim 5 for the same reason as discussed with respect to claim 5 above. Bereiter further teaches notifying a user that a responses has become available (e.g.; see Bereiter step 72 in Fig. 5); Pawlan teaches a trusted applet that when granted access to specific resources can modify a local source file in a safely manner (e.g., see Pawlan Para 5 title 'Local File Access'). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have removed the Run key as well as the polling application from the local device once the support session is over in order to remove unnecessary data from a device and to speed up the device startup process.

(10) Response to Argument

Bereiter reference: Bereiter teaches a method and system for providing automated customer support and service in a distributed computing environment wherein a problem at the remote distributed node is diagnosed using an iterative problem solving session between the remote distributed node and the server node; and wherein the iterative problem solving session

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refers to set of communications back and forth between the node under test and the diagnostic center by which a solution to a technical problem is reached (e.g., see Fig. 2 and col. 4 lines 60-67 through col. 5 lines 1-10). A plurality of client machines wherein the plurality of client machines interface with a support center and when encounter problems can seek help using conventional browser software in an automated manner, without necessarily connecting to a support engineer via an audio or on-line link (e.g., see col. 4 lines 60-67 through col. 5 lines 1-36). During a support session, a data set indicative of a current operating state of the client machine is collected and conveyed from the client machine to the server for analysis and based on the analysis performed at the server node, the data gathering process is repeated at the client machine, iteratively, until a solution for the problem is available (e.g., see col. 2 lines 21-37).

Pawlan reference: Pawlan teaches a for an applet to access local system resources outside the directory from which the applet is launched, the applet must be granted explicit access to those resource (e.g., see Pawlan Para 5 title 'Local File Access').

Indigo reference: Indigo teaches modifying the RUN ONCE key in local registry system to allow an application program to auto play after the system restarts (see Indigo e.g., posted reply by Mark).

The arguments:

- I. **The appellants argue (Appeal Brief dated 12/21/2007 page 4)** with respect to claim 1 that the prior art of Bereiter does not disclose "polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated".

In response, the examiner respectfully disagrees. As explained above, Bereiter discloses polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated (e.g., see Fig. 2, col. 2 lines 27-37 and col. 7 lines 17-35). Bereiter discloses a data set indicative of a current operating state of the client machine is forwarded from the client machine to the support provider (e.g., server) for analysis. Based on this data set, the problem can be identified and provided to the client or the new data set can be forwarded to the server for the response (e.g., see col. 7 lines 17-35). Clearly, after the client sends a data set to the server, **the client is making a inquiry (e.g., polling) to the server** asking to see if the problem can be identified or asking the server to see if the server needs any further information. If the problem can be identified based on the information provided, the client is provided with the solution and the client ends the inquiry. If the problem cannot be identified, **the client repeats the inquiry** with a new data set on an automated basis, until a response becomes available or the support session is terminated.

- II. **The appellants argue (Appeal Brief dated 12/21/2007 page 4)** that the method of Bereiter is clearly not a polling of the support provider, but rather a polling by the support provider of the client for more information regarding the problem encountered.

In response, the examiner respectfully disagrees. As addressed above, **the client is clearly making an inquiry (e.g., polling) to the server** with a data set asking to see if the problem can be identified or asking the server to see if the server needs any further information. If the problem can be identified based on the information provided, the client is provided with the solution and the client ends the inquiry. If the problem cannot be identified, **the client repeats the inquiry** with a new data set on an automated basis, until a response becomes available or

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the support session is terminated (e.g., see col. 7 lines 17-35). Contrary to the appellant's argument, **the client keeps polling the server** with different sets of data for a response until a response becomes available or the support session is terminated.

- III. **The appellants argue (Appeal Brief dated 12/21/2007 page 4)** that Bereiter's method of "the data gathering process is repeated at the client machine, iteratively, until a solution for the problem is available" is unmistakably the exact opposite of the presently claimed "polling the support provider for a response to the query".

In response, the examiner respectfully disagrees. As addressed above, the data gathering process is repeated to create a new data set so that **the client can repeat the inquiry** with the new data set to the server for a response (e.g., see col. 7 lines 17-35). In that sense, **the client keeps polling the server** with different sets of data for a response until a response becomes available or the support session is terminated.

- IV. **The appellants argue (Appeal Brief dated 12/21/2007 page 5, paragraph 4)** that the client is the one doing the polling and that if one skill in the art reading the specification would have understood that the client is included in the claimed language.

In response, the examiner notes that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

- V. **The appellants argue (Appeal Brief dated 12/21/2007 page 6)** that claims 10-11, 13-18, and 20 are not patentable over Bereiter in view of Pawlan.

In response, the examiner respectfully submits that the appellants similarly repeat the

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arguments that Bereiter does not teach "polling the support provider for a response to the query, on a repeated and automated basis, until a response becomes available or the support session is terminated". These arguments have been addressed as set forth above in the response to claim 1. The examiner further notes one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

VI. The appellants argue (Appeal Brief dated 12/21/2007 page 7) that claims 3-7 and 19 are not patentable over Bereiter in view of Pawlan further in view of Indigo.

In response, the examiner respectfully submits that the appellants rely on the arguments of claims 1 and 18. These arguments have been addressed as set forth above in the response to claims 1 and 18.

VII. The appellants argue (Appeal Brief dated 12/21/2007 page 7) that claims 15-17 comply with the written description requirement.

In response, the examiner respectfully disagrees. As addressed above, the term "computer readable medium" was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The closest disclosure in the specification is found in on page 2 lines 18-21 of the instant specification where "the application may be stored on a device" is disclosed and in Figure 1 where a PC 10 is demonstrated. This disclosure is not similar in scope to the term "computer readable medium". The examiner further notes that there has not been an agreement as to what a "computer readable medium" is really meant. In fact, the term "media" or "medium" is commonly defined in the industry to mean

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material which can **store or transmit** computer software, data, or both. One of the definitions is found in the Authoritative Dictionary of IEEE Standards Terms and is attached hereto:

Media (1) (A) A means of communication. (B) Material on which information can be **stored or transported**.

Based on the common definition, the term "computer readable medium" includes both storage medium and transmission medium, this scope is different from what was disclosed by instant specification. For this reason, claims 15-17 do not comply with the written description requirement.

VIII. The appellants argue (Appeal Brief dated 12/21/2007 pages 7, 8) that claims 15-17 are directed to statutory subject matter.

In response, the examiner respectfully disagrees. As addressed above, the software element as recited in claim 15 would reasonably be interpreted by one of ordinary skill in the art as software, per se because it is this "software element" that is being claimed not the computer readable medium. In addition, as addressed above, the appellants provide no specific definition for the term "computer readable medium"; therefore, the ordinary meaning of the term "medium" is applied for the purpose of claim 15 interpretation. And in broad interpretation, the term "medium" can include non-statutory subject matter (e.g., transmission medium as addressed above). Perhaps, if the term "computer readable medium" is intended as including physical and tangible computer storage device or statutory subject matter, the Appellants need to amend the specification as such. No new matter should be entered.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/TuyetLien T Tran/
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